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PATENT
Attorney Docket No. 05725.0425-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Isabella ROLLAT-CORVAL et al.

Application No.: 10/706,048

Filed: November 13, 2003

For: **COSMETIC COMPOSITIONS
COMPRISING AT LEAST ONE
BRANCHED SULPHONIC
POLYESTER AND AT LEAST
ONE CONDITIONING AGENT**

)
) Group Art Unit: 1617
) Examiner: Layla Soroush
) Confirmation No.: 9222
)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENTS

In a restriction requirement dated April 12, 2007, the Examiner required
restriction under 35 U.S.C. § 121 between the following groups of claims:

- Group I, claims 1 and 3-40 drawn to a cosmetic composition;
- Group II, claims 41-43, drawn to a process for treating keratin fibers; and
- Group III, claim 44, drawn to a method of making a cosmetic styling formulation.

Office Action at page 2. Applicants elect, with traverse, to prosecute Group I, claims 1 and 3-40, drawn to a cosmetic composition.

There are two criteria for a proper requirement for restriction: (A) the inventions must be independent or distinct as claimed; and (B) there must be a serious burden on

the Examiner, if restriction is required. M.P.E.P. § 803 (8th ed. Rev. 5, 2006) (emphasis added).

Applicants traverse the restriction/election requirement on the grounds that a proper search and examination of the subject matter covered by all the pending claims, 1 and 3-44, would not be unduly burdensome on the Examiner since a search of the cosmetic composition (Group I) would overlap the search of the process of treating keratin fibers (Group II) and the search of the method of making a cosmetic styling formulation (Group III). Specifically, the subject matter of all the presently pending claims would require the Examiner to search for the novel cosmetic composition comprising at least one branched sulphonic polyester and at least one conditioning agent chosen from non-volatile silicones, cationic and amphoteric polymers and cationic and amphiphilic surfactants. The position supported by the fact that each of the three groups of claims is classified by the Examiner in the same class (424) and subclass (401). Accordingly, it is unclear what burden is on the Examiner to examine Group I, II and III together. Applicants thus respectfully request withdrawal of the restriction requirement.

The Examiner further alleges that the present application contains claims directed to more than one species of the generic invention. Specifically, the Examiner asserts that the claims are directed to the following patentably distinct species: various sulphonic polyesters, non volatile silicones, cationic & amphoteric polymers, cationic & amphiphilic surfactants, and propellants. Office Action at page 5.

While Applicants disagree with the election of species requirement, to be fully responsive, Applicants elect, with traverse, the following species:

- 1) as a sulphonic polyester: a branched sulphonic polyester;
- 2) as a conditioning agent: non volatile silicones; and
- 3) as a propellant: dimethyl ether.

The elected claims encompassed by the elected species include claims 1, 3-20 and 29-40.

Applicants respectfully request that the full scope of the claimed invention continue to be examined in this application without restriction or election. If the Examiner chooses to maintain the election requirement, Applicants respectfully request the Examiner, if the elected species is found allowable, to continue to examine the full scope of the subject matter to the extent necessary to determine the patentability thereof, that is, extending the search to a reasonable number of the non-elected species according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

In view of the foregoing remarks, Applicants respectfully submit that both the restriction and election of species requirement are in error and request that the requirement be withdrawn.

A Petition for Extension of Time for two-months along with the appropriate fee is submitted herewith. If any additional fees are required to enter this response, Applicants request that those fees be charged to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: July 11, 2007

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